SYED HUSSAIN SYED JUNID & ORS A

v.

PENTADBIR TANAH NEGERI PERLIS

FEDERAL COURT, PUTRAJAYA B
ARIFIN ZAKARIA CJ
RAUS SHARIF PCA
HASHIM YUSOFF FCJ
ABDULL HAMID EMBONG FCJ
JEFFREY TAN FCJ C
[CIVIL APPLICATION NO: 08(f)-633-08-2012(R) &
CIVIL APPEAL NO: 01(f)-20-08-2012(R)]
7 OCTOBER 2013

LAND LAW: *Acquisition of land - Award - Appeal to Federal Court - Appeal against amount of compensation awarded - Whether appealable - Whether ss. 40D & 49(1) Land Acquisition Act 1960 circumvented* D

CIVIL PROCEDURE: *Appeal - Leave to appeal - Acquisition of land - Award - Appeal to Federal Court - Whether leave to appeal must first be obtained - Land Acquisition Act 1960, s. 49(1)* E

The appellants' entire land was acquired under the Land Acquisition Act 1960 ('the Act'). Following an enquiry conducted by the land administrator under s. 12 of the Act, the appellants objected to the amount of compensation awarded. The matter was F then referred to the High Court where an additional compensation of RM1,589,720.48 was awarded for the land. Still feeling aggrieved, the appellants appealed to the Court of Appeal but their appeal was dismissed. Hence, this appeal. It was argued that the High Court had applied the wrong principle of law in G assessing and arriving at the amount of compensation as it did. The issues that arose for determination herein were in relation to: (i) whether there was a necessity for the appellants to file an application for leave to appeal; and (ii) whether the appellants were appealing against the amount of compensation awarded. H

Held (dismissing appeal with costs)
Per Raus Sharif PCA delivering the judgment of the court:

(1) In civil cases, leave of the Federal Court is required before an I appeal can be lodged to the Federal Court against the decision of the Court of Appeal. However, s. 49(1) of the Act should be accorded with a similar interpretation as s. 103E of

A the Legal Profession Act 1976. Like s. 103E, there was no requirement under s. 49(1) of the Act that leave to appeal must first be obtained before an appeal can be lodged in the Federal Court. Thus, there was no necessity for the appellants to file the application for leave to appeal. In the circumstances, B the appellants' application for leave to appeal was struck out with costs. (paras 12 & 15)

(2) While s. 49(1) of the Act allows any interested person to appeal against the decision of the High Court to the Court of C Appeal, s. 40D appears to have restricted the ambit of such an appeal. Section 40D(3) of the Act clearly provides that any decision as to the amount of compensation awarded shall be final and there shall be no further appeal to the higher court on the matter. (para 17)

D **(3)** The High Court had addressed the principal complaint of the appellants that the land should be treated as one whole land, and the assessment of the market value should be for the whole land and not as individual lots as was done by the land administrator. It was clear that the appeal herein was against E the amount of compensation awarded. Thus, this appeal was nothing more than an attempt to circumvent the salient provisions of ss. 40D and 49(1) of the Act which precludes any party from appealing against the award of compensation. (paras 23 & 24)

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Bahasa Malaysia *Translation Of Headnotes*

Kesemua tanah perayu-perayu telah diperolehi di bawah Akta Pengambilan Tanah 1960 ('Akta'). Berikutan siasatan yang G dijalankan oleh pentadbir tanah di bawah s. 12 Akta, perayu-perayu membantah atas jumlah pampasan yang diberi. Perkara ini kemudiannya dirujuk ke Mahkamah Tinggi di mana pampasan tambahan sebanyak RM1,589,720.48 telah diberi bagi tanah itu. Masih rasa terkilan, pihak perayu telah merayu ke Mahkamah H Rayuan tetapi rayuan mereka ditolak. Oleh itu, rayuan ini. Adalah dihujah bahawa Mahkamah Tinggi telah menggunakan prinsip undang-undang salah dalam menilai dan mencapai jumlah pampasan yang dibuat olehnya. Isu-isu yang dibangkitkan untuk pertimbangan di sini adalah berkaitan dengan: (i) sama ada terdapat keperluan I untuk memfailkan kebenaran untuk merayu; dan (ii) sama ada perayu-perayu merayu terhadap jumlah pampasan yang diawardkan.

Diputuskan (menolak rayuan dengan kos)
Oleh Raus Sharif PMR menyampaikan penghakiman mahkamah:

(1) Dalam kes-kes sivil, kebenaran Mahkamah Persekutuan diperlukan sebelum membuat rayuan ke Mahkamah Persekutuan terhadap keputusan Mahkamah Rayuan. Walau bagaimanapun, s. 49(1) Akta perlu diberi tafsiran serupa dengan s. 103E Akta Profesion Undang-Undang 1976. Seperti s. 103E, tiada keperluan di bawah s. 49(1) Akta bahawa kebenaran merayu mesti diperolehi terlebih dahulu sebelum rayuan boleh dibuat ke Mahkamah Persekutuan. Oleh itu, tiada keperluan bagi perayu-perayu untuk memfailkan permohonan kebenaran merayu. Dalam keadaan ini, permohonan pihak perayu untuk kebenaran merayu dibatalkan dengan kos.

(2) Apabila s. 49(1) Akta membenarkan seseorang yang berkepentingan untuk merayu terhadap keputusan Mahkamah Tinggi ke Mahkamah Rayuan, s. 40D menyekat rayuan sebegitu. Seksyen 40D(3) Akta memperuntukkan bahawa sebarang keputusan berkenaan jumlah pampasan yang diawardkan adalah muktamad dan rayuan tidak boleh dibuat ke mahkamah atasan berkenaan perkara tersebut.

(3) Mahkamah Tinggi telah pun menangani aduan utama pihak perayu bahawa tanah itu mesti dilihat sebagai satu tanah secara keseluruhannya, dan penilaian nilai pasaran adalah untuk keseluruhan tanah dan bukan untuk lot-lot individu seperti yang dibuat oleh pentadbir tanah. Adalah jelas bahawa rayuan ini adalah terhadap jumlah pampasan yang diawardkan. Oleh itu, rayuan ini adalah suatu percubaan untuk mengelak peruntukan penting ss. 40D dan 49(1) Akta yang menghalang sesuatu pihak daripada merayu terhadap award pampasan.

Case(s) referred to:
Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang [2011] 5 CLJ 125 FC ***(refd)***
Lau Keen Fai v. Lim Ban Kay & Anor [2012] 1 CLJ 569 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 96(a)
Land Acquisition Act 1960, ss. 12, 38(5), 40D(1), (3), 49(1)
Legal Profession Act 1976, s. 103E

A *For the appellants - K Kirubakaran (S Suhirtha Malar with him); M/s Peter Miranda & Co*
For the respondent - Abdul Rasid Sudin; State Legal Advisor

[Appeal from Court of Appeal; Civil Appeal No: R-01-396-2011]

B *Reported by Kumitha Abd Majid*

JUDGMENT

C **Raus Sharif PCA:**

Introduction

[1] There are two matters before us namely Civil Application No: 08-633-08-2012(R) and Civil Appeal No: 01(f)-20-08-2012(R). The Civil Application and Civil Appeal were filed by the plaintiffs ("appellants") against the decision of the Court of Appeal delivered on 27 July 2012. The Court of Appeal had dismissed the appellants' appeal against the award of compensation awarded by the High Court under the Land Acquisition Act 1960 ("LAA").

[2] We heard both matters on 13 May 2013. After hearing the parties, we adjourned both matters for our consideration and decision. We now give our decision and the reasons for the same.

Background Facts

[3] The appellants were some of the co-owners of Lots No. 710, No. 711 and No. 712, held under one title, that is, GM214 Mukim Sungai Adam, Perlis. The three lots were originally known as Lot No. 338 measuring 21.3858 hectares ("land"). When it was sub-divided into three separate lots the land area of the individual lots are as follows:

(a) Lot 710 0.678 hectare;

(b) Lot 711 18.9232 hectares; and

(c) Lot 712 2.2948 hectares.

[4] The entire land was acquired under the LAA pursuant to Gazette Notification No: 2 Jilid 47 dated 15 January 2004. The purpose of the acquisition was for the construction of low cost housing project.

[5] An enquiry was conducted by the Land Administrator under s. 12 of the LAA. Upon conclusion of the enquiry, a written award in Form G was prepared by the Land Administrator on the three lots which are as follows:

(a) Lot 710: RM258,000 per hectare or RM2.40 psf;

(b) Lot 711: RM66,500 per hectare or RM0.62 psf; and

(c) Lot 712: RM345,000 per hectare or RM3.20 psf.

[6] The appellants objected to the amount of compensation awarded and in reliance on s. 38 of the LAA, they filed their respective written applications in Form N to the Land Administrator requiring that the latter refer the matter to the High Court for its determination. The Land Administrator accordingly referred the matter to the High Court by way of reference in Form O as required under s. 38(5) of the LAA. Henceforth, the land reference proceeding in the High Court.

[7] The land reference proceeding was presided by the learned Judicial Commissioner. He was assisted by two assessors, namely, Puan Norma binti Kassim, a Government valuer and Encik Kamarulzaman bin Awang, a private valuer. After hearing the parties and after taking into account the concurrent opinion of the two assessors on the market value of the land, the learned Judicial Commissioner awarded an additional compensation of RM1,589,720.48 for the land. The concurrent opinion of the two assessors as to the market value of the land was RM1.60 per square foot (psf).

[8] Still aggrieved with the additional amount of compensation awarded by the learned Judicial Commissioner, the appellants appealed to the Court of Appeal. On 27 July 2012, the Court of Appeal dismissed the appeal. Hence the two matters before us.

Civil Application For Leave To Appeal

[9] At the outset learned counsel for the appellants informed us that the application for leave to appeal was filed out of an abundance of caution. In fact, he submitted that in cases of this nature, there is no necessity for leave to appeal. He contended that under s. 49(1) of the LAA an appeal lies automatically to the Federal Court against any decision of the Court of Appeal.

[10] The learned State Legal Advisor of Perlis for the respondents contended otherwise. He submitted that the appellants have no automatic right of appeal but must first obtain leave to appeal pursuant to s. 96(a) of the Courts of Judicature Act 1964 ("CJA").

Findings

[11] The appellate jurisdiction of the Federal Court in respect of civil matters is provided for under s. 96(a) of the CJA which provides as follows:

> 96. Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court:
>
> (a) From any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage.

[12] It is clear from the above provision that in civil cases, leave of the Federal Court is required before an appeal can be lodged to the Federal Court against the decision of the Court of Appeal. But there are exceptions as there are statutes which allow an aggrieved party an automatic right to appeal to the Federal Court without the necessity of obtaining leave under s. 96(a) of the CJA. A good example of such a statute is the Legal Profession Act 1976 ("LPA"). With regard to the right of appeal, s. 103E of the LPA provides as follows:

> Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.

[13] In *Lau Keen Fai v. Lim Ban Kay & Anor* [2012] 1 CLJ 569; [2012] 2 MLJ 8 ("Lau Keen Fai") the Federal Court in deciding that s. 103E of the LPA allows the aggrieved party an automatic right of appeal to the Federal Court from the decision of the Court of Appeal gave the following reasons:

> [6] The new amended provision of s. 103E of the LPA now permits an appeal against the decision of the High Court to the Court of Appeal and thereafter to the Federal Court. There is no other specific provision in the LPA requiring that leave must first be obtained for an appeal to be lodged in the Federal Court.

[14] The question is whether s. 49(1) of the LAA should be given a similar interpretation. Section 49(1) of the LAA reads as follows:

> Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[15] We are of the view that s. 49(1) of the LAA should be accorded similar interpretation as s. 103E of the LPA. Like s. 103E of the LPA there is no requirement under s. 49(1) of the LAA that leave to appeal must first be obtained before an appeal can be lodged in the Federal Court. Thus, in the present case, there is no necessity for the appellants to file the application for leave to appeal. In the circumstances, the appellants' application for leave to appeal is hereby struck out with costs.

Civil Appeal No: 01(f)-20-08-2012(R)

[16] The main issue in this appeal revolves around the interpretation of s. 40D of the LAA which reads as follows:

> **40D. Decision of the Court on compensation**
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> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
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> (2) Where the assessors have each arrived at a decision which differs from each other than the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.
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> (3) Any decision made under this section is final, and there shall be no further appeal to a higher court on the matter.

[17] Thus, while s. 49(1) of the LAA allows any interested person to appeal against the decision of the High Court to the Court of Appeal, s. 40D appears to have restricted the ambit of such an appeal. Section 40D(3) clearly provides that any decision

as to the amount of compensation awarded shall be final and there shall be no further appeal to the higher court on the matter. This non-appealable provision of s. 40D(3) is further reinforced by the proviso of s. 49(1) which reads:

> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[18] Historically speaking, s. 40D is a new section introduced by the Land Acquisition (Amendment) Act 1997 (Amendment Act 1997). The Amendment Act 1997 had also *inter alia* amended the proviso of s. 49(1) of the LAA. Before the amendment, the proviso of s. 49(1) reads

> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five thousand ringgit.

[19] Thus, even before the Amendment Act 1997, there was already an existing bar on the right of appeal by an aggrieved party on the award of compensation. The right of appeal against the amount awarded only arose when the amount exceeds five thousand ringgit.

[20] With the introduction of s. 40D and the amendment to the proviso of s. 49(1), the intention of the Parliament is very clear ie, to preclude any party from appealing against the order of compensation made by the High Court. The effect of the introduction of s. 40D and the amendment to the provision of s. 49(1) of the LAA was discussed by this Court in *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125. Hashim Yusoff FCJ speaking for the Federal Court said as follows:

> It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal, I do not see anything ambiguous in ss. 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order compensation issued by the learned trial judge.

[21] We have no reason to depart from the above view. However, before us learned counsel for the appellants submitted that the appeal was not against the compensation awarded but rather the wrong principle of law applied by the High Court in its

assessment and arriving at the amount of compensation as it did. With respect, based on the record of proceedings before us, we find that what was in dispute before the Land Administrator and later before the learned Judicial Commissioner was on the issue of compensation for acquisition of the land.

[22] Before the High Court, the complaint was against the fact that the Land Administrator had valued the land separately and attaching separate valuation to each of the three lots. It was argued that the land ought to be valued as a single entity at RM345,000 per hectare which is equivalent to RM3.20 psf as awarded to Lot 712 by the Land Administrator. The High Court accepted the appellants' argument that the land ought to be valued as a single entity but rejected the contention that it ought to be valued at RM3.20 psf. Both assessors were unanimous in their opinion that the land ought to be valued at RM1.60 psf. The learned Judicial Commissioner applying s. 40D(1) of the LAA accordingly accepted the opinion of the assessors, resulting in the award by the Land Administrator being increased from RM2,093,391.20 to RM3,683,111.68. The additional compensation awarded for the land was RM1,589,720.48.

[23] Clearly from the above, the High Court had addressed the principal complaint of the appellants that the land should be treated as one whole land, and the assessment of the market value should be for the whole land and not as individual lots as was done by the Land Administrator. The appellants' complaint before the Court of Appeal was basically on the amount of compensation awarded by the High Court. This is clearly reflected in the notice of appeal lodged by the appellants against the decision of the High Court which reads as follows:

NOTIS RAYUAN

> Sila ambil perhatian bahawa Perayu-perayu/Pemohon-pemohon yang ke 2, 4, 16, 17, 18, 26, 27, 35, 36 dan 38 dalam perkara di atas tidak berpuas hati dengan keputusan Yang Arif Pesuruhjaya Kehakiman TUAN MOHD ZAKI BIN ABDUL WAHAB yang diberikan di Mahkamah Tinggi Malaya di Kangar yang bersidang di Alor Setar **merayu kepada Mahkamah Rayuan Malaysia terhadap keseluruhan keputusan tersebut mengenai pampasan tambahan.**

A Bertarikh pada 23 haribulan Mei, 2011

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Peguamcara bagi Perayu/
perayu Pemohon-pemohon
B yang ke 2, 4, 16, 17, 18,
26, 27, 35, 36 dan 38

(emphasis added)

[24] From the underlined passage, it is clear that the appeal
C herein is against the amount of compensation awarded. In our considered view, the appeal herein is nothing more than an attempt to circumvent the salient provisions of ss. 40D and 49(1) of the LAA which precludes any party from appealing against the award of compensation.

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[25] For the above reasons, the appellants' appeal is dismissed with costs.

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